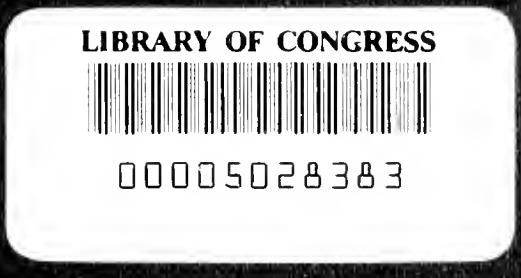

SPEECH

OF

JOHN THOMPSON BROWN,

(OF PETERSBURG,)

IN THE

HOUSE OF DELEGATES OF VIRGINIA,

IN COMMITTEE OF THE WHOLE,

ON THE

STATE OF THE RELATIONS BETWEEN

THE

United States and South Carolina.

Delivered January 5, 1833.

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SPEECH.

Mr. Brown of Petersburg, said, that in the course of the remarks which he begged leave to submit to the committee, upon the important subject under consideration, he should take many things for granted, which had afforded to other gentlemen a theme of eloquent and impressive discourse. He should take it for granted, that all were sensible of the value of the Union, and of the disastrous consequences which must result from its dissolution. He should take it for granted, that all were actuated by the same patriotic desire to preserve at every hazard, the peace and happiness of our common country; and that purity and disinterestedness of purpose, which he accorded to others, he claimed for himself, and he claimed no more. It would not, perhaps, be going too far, to presume that all were convinced, that it was indispensably necessary that Virginia should come forward and interpose, in some shape or other, in the unhappy controversy to which all eyes were now turned with such painful anxiety. When it was admitted on every hand that the Union was in danger—when the ties which had so long bound the States of this Confederacy together in close and glorious fellowship, were about to be broken—when that beautiful fabric of republicanism, for the establishment of which, she had so freely poured forth her blood and treasure in by-gone days, was tottering to its fall, Virginia could not fold her arms in cold neutrality, and calmly await, without seeking to avert, a catastrophe which, come when it might, would bury deep in one indiscriminate ruin, the liberties and happiness of this hemisphere, if not of the whole human family. But in what mode should she interpose to calm the troubled elements? All exclaimed, that she must assume the office of mediation. He admitted that there was something so intrinsically lovely in the labours of the peace-maker, that we were impelled to this course by the finest impulses of the human heart; and a few days ago, when we were first startled by the menace of approaching violence, in the agitation of the moment, he might have lent a willing ear to the mildest words of conciliation, and turned with aversion from the language of remonstrance. But, if that weakness ever affected him, it had passed away. He was in favor of mediation, but a cautious and guarded mediation—a mediation (if mediation it could be called,) founded in reason and justice, and not in the suggestions of a visionary sympathy. He would have Virginia declare her opinions freely and fully upon all the principles involved in the controversy—courteously, of course—but yet with a decision and frankness that would leave no doubt of the course she would pursue under every event which could as yet be

foreseen. Let her sister States, one and all, listen if they pleased and follow her advice, if they approved it. She would have done her duty, and should her admonitions fall unheeded to the ground, let the consequences be on those who contemned her friendly voice.

Some gentlemen, he said, feared that if we censure the conduct of South Carolina, we should give offence, and not only defeat the object of our intercession, but drive that proud and sensitive people, already chafed and fretted with their wrongs, into still greater excesses. Feeble, indeed, he said, must be the bond which holds us together, if this or any other State, could not freely express its views upon matters equally interesting to all, without being challenged for insult or arrogance. If this Union, the citadel of our liberties, was so weak and ruinous that the warder on the watch-tower could not proclaim the approach of danger, lest his voice should shake the crumbling edifice to the earth, let it fall at once, for it was no longer a means of security or defence. The gentleman from Fauquier, sought to obviate this difficulty by the adoption of a single resolution requesting South Carolina to repeal her Ordinance, without assigning any other reason than that it may endanger the Union. Could that gentleman, in his most sanguine moments, flatter himself with the hope that our request, preferred under such circumstances, would be complied with? Did he not remember the fearful deliberation with which South Carolina had advanced to her present position—her resolutions—her protests—her manifestos—her spirit-stirring addresses—her final declaration, in which she had proclaimed to the world, that her grievances were no longer tolerable, and she would redress them—peaceably, if she could—forcibly, if she must. Standing committed as she did before her sister States, would she, at the bare bidding of Virginia, abandon her measures and retrace her steps? Had we any reason to believe that the influence of the "Old Dominion" was so commanding—so especially potent over South Carolina, that her mere suggestion would produce this almost miraculous effect? Or did we persuade ourselves that Carolina was merely playing the braggadocio in the face of nations, and after startling us with apparitions of disunion and blood, waited only for a pretext to shrink from the contest she had provoked? Her Convention was adjourned—her Legislature gone to their homes—the first of February was rapidly approaching—every state paper that she issued—every measure she adopted—indicated a determination to press forward in her purpose, and even to close the door to retreat. And yet the gentleman from Fauquier believed that when Virginia invoked her to desist, from a regard for that Union, whose value she had already calculated, like a charmed spirit under the wand of the magician, she would obey, without even questioning the cause, or demanding an equivalent. He said we could not expect—we could not wish, even for the sake of the benefits which might result from it, that a people confessedly brave and chivalrous even to a fault, should act so puerile a part—exhibit so lamentable a spectacle of imbecility. There was one event, and only one, in which our overtures, in the

shape proposed by the gentleman from Fauquier, could prove effectual. If South Carolina should believe that a compliance with our request, and a repeal of the Ordinance, would impose on Virginia an obligation to find other and sufficient means of redress, to accomplish the object at every hazard, she would, no doubt, accede to our proposition. She would then have gained an ally; and might, without loss of dignity or honor, change her attitude and renew the contest under different auspices. Was Virginia now prepared to pledge herself that the protective system should be overthrown, even though the Union should fall with it?

There was but little difference of opinion in this commonwealth, as to the unequal and oppressive operation of this system. He claimed no more consistency for himself, on this or any other subject, than he allowed to others; but it was a reminiscence of some value to him, and perhaps he might be pardoned for alluding to it, that his earliest essay in politics, was in reprobation of a protective tariff. When he first stood at the threshold of public life, and put forth a step to enter, the greatest, and he might almost say, the only obstacle in his way, was the zeal with which, to the extent of his humble abilities, he opposed this odious policy of forcing manufactures prematurely into existence. He had, however, always thought that the legislation on this subject was a perversion of the spirit and intent of the Constitution, rather than a violation of its literal provisions. The power "to lay and collect taxes, duties, imposts, and excises, to pay the debts" of the nation, and for other specified objects, vested in Congress the discretion to judge what amount of revenue was necessary for the purpose. More revenue might be raised than was required for the objects contemplated by the Constitution; and this might be done designedly, in which case it was a wilful abuse of a discretionary power, but it was an abuse perpetrated within the forms of the Constitution, which had provided no check or corrective as to the amount of revenue to be raised. The Constitution had enumerated the objects for which revenue should be raised; and no matter how raised, or to what extent, it could not be appropriated to any other objects than those specified. In all cases where an appropriation was to be made, it was perfectly easy to decide whether it was constitutional or otherwise. When money was raised by the Federal Government, and expended in the construction of a road or canal, we were able to decide at once, that the object of appropriation was not contemplated by the Constitution, and that the violation was in the secondary stage of the operation; so, if revenue after being raised, were bestowed on the manufacturers in the form of bounties for their encouragement, we could lay our finger on the infraction. But it happened in regard to this protective system, that the purpose was effected in the process of raising the revenue, without the necessity of an appropriation. The protection to manufactures was incidental; and whether it were the primary or secondary motive, the secret or the avowed object of laying imposts, the violation was accomplished under cover of the exercise of a discretionary power. It was a measure of policy not foreseen by the parties to the Constitution, and was productive of as

decided benefit to the manufacturers and injury to other classes of the community, as if premiums were conferred directly on them; but still it could only be characterized as an unconstitutional object effected by constitutional means.

Oppressive, however, as this system was admitted by all to be, and repugnant as it unquestionably was to the spirit of the Constitution, had we not, he said, abundant reasons for believing that it would speedily be abandoned by Congress? The public debt was now virtually extinguished, and the condition of our country such as had never before existed since the formation of the government. When this infant confederacy came forth triumphant from the war of the revolution, it was heavily oppressed by financial embarrassments, and from that period up to the present, there had been a continued necessity for heavy taxation; not simply to defray the current expenses of the government, but to pay those debts which might justly be considered the price of our independence. Whilst a large amount of revenue was wanted, what was more reasonable, what more politic, than that some incidental aid should be given to a branch of industry just struggling for existence, and claiming to be stimulated by patriotic motives? But what an altered spectacle was now exhibited. Notwithstanding the fresh accumulation of debt from our late glorious war with Great Britain, we had a flourishing commerce, an overflowing treasury, and owed not a cent in the world. The present Chief Magistrate of the United States, by a line of policy, which for its justice and wisdom, and the consistency with which it had been pursued, had never been exceeded in our past history, was bringing back the Federal Government, in its practical operation, to its appropriate limits. He had arrested the unconstitutional expenditure of the public money upon works of internal improvement, and thereby given the death-blow to an extensive system of fraud and extravagance. He had faithfully applied the public resources to the discharge of the national debt, and thus closed forever, a heavy and incessant drain on the treasury. He had evinced a determination to reduce the expenses of the government to the lowest point of economy, consistent with its efficiency and respectability; and after lessening to the utmost practicable extent, the demand for revenue, he had availed himself of the occasion to vindicate the Constitution, by putting an end to the United States Bank, which owed its existence to the pecuniary embarrassments of the government, and could no longer be defended as a necessary facility for the management of the fiscal concerns of the nation, simple and limited as those concerns must for the future be. Under such circumstances, what pretext was left for keeping up a high rate of duties? Let us not, he said, be in haste to break up the Union for the fear of unjust and onerous taxation. The days of the Tariff and the American System were already numbered. The people would pay all that might be necessary for the support of the government, but no people ever yet voluntarily submitted to pay more; and it should not be forgotten, that we had given a memorable proof of our impatience under unjust taxation, in the struggle which separated us from the crown of England. The resistless mandate of

public opinion, which would soon be audible throughout the land, would settle the doom of this iniquitous system; and it was our duty as patriots and philanthropists, patiently to await this peaceful and salutary consummation. With such prospects before us, he again asked, whether Virginia was ready to pledge herself to follow the fortunes of South Carolina, rash and impatient as she had proved herself to be? Take but the first step with her, and retreat was impossible. It might be that our fair and reasonable expectations of relief from Congress would be disappointed—that a short-sighted and relentless majority would refuse, for a time, and perhaps for years, to relinquish their customary exactions from the fruits of our industry. In that event, the countenance and support which we might promise to South Carolina to-day, would, in the end, be required at our hands; and national faith and honor would leave us no alternative but to walk with her, if she willed it, through "the valley and shadow" of disunion. He wished to impose no restraint on the independent action of Virginia hereafter. If our hopes of relief from Congress should fail, it would be time enough to decide on ulterior measures—South Carolina had already decided in advance. But he would not now, either expressly or by such implication as might grow out of the vague proposition of the gentleman from Fauquier—and as must grow out of it before it could have any effect—give assurances to South Carolina of support in any measures not strictly warranted by the Constitution.

As he was not, he said, in favor of throwing Virginia into the arms of South Carolina, and the candid and impartial expression of opinions which he recommended, might not have the effect of inducing that State to abandon her measures, he had reflected with much anxiety upon the probabilities of an interruption of the peace and quiet of the country, provided the ordinance and laws of nullification should be permitted to take effect, and had brought himself to the conclusion that there was but little danger of any speedy resort to force on either hand. The advocates of nullification had always contended strenuously, that it was a pacific remedy; and while it was impossible to view it as such, in its ultimate tendency and consequences, he trusted its very first operation would not falsify the promises of its authors. He would, for a moment, attempt to trace the action of this most subtle and mysterious device. If an importation of goods were made to the port of Charleston, and a bond given for the duties, a suit must be brought by the government, and as a matter of course, the jury would find for the defendant, being sworn to give effect to the ordinance and act of nullification. No appeal could he taken, because it is made the duty of the Court below, to deny a copy of the record of the proceedings. If, however, a judgment should be obtained by the government, no obstruction was to be offered to the Marshal in levying an execution, and he might proceed to make sale of the goods; but the law of the State provided that no title should be acquired by a purchase under such sale, and the property might even be recovered again by the owner, so that, of course, there would be no

purchaser. It was manifest here, that there was no necessity for the use of force on the part of the State, and no pretext for it on the part of the United States, which assuredly had no authority to compel a verdict from a jury, or a copy of the record from the Court, at the point of the bayonet. If the goods imported were such as no credit is allowed upon, by existing laws, the revenue officer would detain the requisite portion of them, until the duties were paid. In this case the importer was authorized to sue out a writ of replevin, by virtue of which the Sheriff would seize the goods and deliver them to him, pending the decision of the action of replevin, which would, of course, result in his favor; or, if the identical goods were not forthcoming by a fresh process, called a *capias in withernam*, reprisals to double the amount were to be made out of the proper goods and chattels of the collector. Here, again, it was evident that the United States could find no occasion to exert force, unless, indeed, it were determined, contrary to law and authority, to resist the process of the judicial tribunals of the State. He was far from intimating that there was no remedy for this flagrant evasion of the revenue laws. It might, and no doubt would become necessary, if the Ordinance were carried into effect, for Congress or the co-states to adopt measures of a coercive character for giving effect to the laws, by closing the ports of the State, or by some other expedient, which it was premature to discuss. But what he wished to impress on the minds of gentlemen was, that the President could not legally, and would not resort to any such extraordinary means of compulsion, unless the Executive arm was strengthened by further legislation. In his recent proclamation he had said very properly, and had said no more than that he would employ force to repel a forcible obstruction of the laws; but if, as was manifestly the case, the laws of South Carolina did not authorize a forcible resistance to the laws of the United States, a collision could not occur, unless the one party or the other should transcend its powers. If that State should, through a Convention of her people, the organ of her sovereignty, ordain a forcible resistance of the revenue laws, it would be a matter for the solemn deliberation of the co-states in Congress assembled, to decide what measures should be taken for maintaining the supremacy of the Federal Government; and it could scarcely be questioned that in that event, the State must either be regarded as without the pale of the Union, and accountable for her conduct as a sovereign power, according to the terms of the compact, or if subject still to the Federal Constitution, must be compelled to yield obedience to the laws. But he did not think such power of coercion was conferred on the President by the existing laws, and he did not understand him as claiming it. He was clothed with authority to employ the military force of the country, in dispersing insurgents, and suppressing combinations of individuals opposing the execution of the laws; but the extraordinary case of resistance by a State, through its constituted authorities, seemed not to have been foreseen or provided for. He, therefore, felt assured that whatever might be the issue of this unhappy con-

troversy, there was no danger of actual strife or bloodshed, even should the ordinance of South Carolina be carried into effect, until after the matter had been submitted to the consideration of Congress; and, in order to add to the public confidence on this subject, he wished in the resolutions to be adopted by the General Assembly, earnestly to represent to the President the propriety of this course.

He said, if he had satisfied the committee that the danger of civil war was not so imminent as to forbid deliberate and cautious action on the subject, he hoped it would be regarded as a fit occasion for Virginia to express her opinions without reserve upon all the topics involved in the controversy. He said he had not heretofore been in favor of the frequent assertion of abstract doctrines on the part of the Legislature, and thought the dignity and force of some great fundamental truths had been weakened by repetition on ordinary occasions, without the adoption of any ulterior measures for their establishment. But surely, if ever there was a time when the vindication of the true principles of our government was important, that time was the present. He trusted in heaven that the peace of the country would be maintained, and that the clouds which were hovering around us might soon be dispersed; but as it was not for human vision to penetrate the thick veil of coming events, it was the part of wisdom to be prepared for the worst. The Union was in danger as all admitted, and from the period of the formation of the Federal Constitution, the State Legislatures had been looked to as sentinels on the watch-towers of liberty, to sound the alarm to the people. Should that assembly prove faithless to their trust, and the storm unhappily burst upon the land, it was easy to conceive, from the consternation which recent events had produced in that small body, the dismay and confusion which must pervade the great mass of citizens who have no means of consultation but through their representatives. It was a fearful thing to see the foundations of government uplifted, and all the elements of social being thrown into wild commotion. There were passions at the bottom of the human heart, which in times of peace slumber so quietly that their existence was not suspected, and woe unto the people, who even in the glorious contest for freedom should incautiously stir up this fatal sediment. Had France in her first and noblest struggle for liberty, had a chart to guide her footsteps and regulate her energies, instead of tarnishing her name with blood and terminating her wild and impetuous career in impotence and disgrace, she might have brought forth triumphantly from the horrors of revolution those captivating principles which she long sought with such ardent but fruitless devotion. As yet, he said, all was calm and tranquil as the surface of a summer's sea—and that was the time for the representatives of the people, whose opinions were but the reflected voice of their constituents, to agree upon the course the Commonwealth should pursue under the expected emergency. That was the time to fix the land-marks—to prescribe the watch-word and the signal —so that when the tempest should come, if come it must, we might

meet it undismayed, and follow with confidence as one united people, the path of duty and safety.

And what, he said, were the principles which it was important to avow on this occasion? For his own part, he wished to see presented anew to the public mind, in order that they might make a fresh and vivid impression, those great outlines of our admirable system of Government, which had been so faithfully and beautifully drawn in the Resolutions of '98, and the Report of '99. It was important to free the original text from those spurious constructions and interpolations, which had been made upon it, for the purpose of countenancing the assumption of unauthorized powers by the Federal Government, on the one hand, and the factious interposition of individual States on the other. The Constitution of the United States, the palladium of our rights, our liberties, and our happiness, which, if fairly interpreted and administered, would fully attain the great ends for which it was formed, was in danger of violation, as well from the usurpation of power by the Federal Government, as from attempts on the part of the States to withhold from that Government, the exercise of powers clearly conferred on it. The recent Proclamation of the President of the United States, which seeks, in the opinion of many, too sedulously even for the laudable object of preserving the Union, to strengthen the Federal Government, had rendered it the more important to re-affirm the doctrines of '98. That Proclamation seemed to him to contain principles incompatible with those that Virginia had long and strenuously maintained; and, although they were not carried out into practical application, there was reason to fear, that unless promptly disclaimed, they might sink too deeply into the public mind. The object of every friend of rational liberty was to save the Union; and in pursuing this noble purpose, with undivided aim, it was reasonable to apprehend that the people might not, in the ardour of their patriotism, examine with sufficient care, the means by which it was to be accomplished. It was his wish to preserve the Union; and, if the worst should come, he would cling to the last remnant of it—but, as he did not yet despair of its safety, and did not think the danger so imminent as to call for the surrender of a part of the system, in order to save the balance, he would still contend for the whole, and endeavor to preserve it in its pure and pristine proportions. Instead of rushing panic-stricken into either extreme, he wished, if possible, to avoid all excitement or alarm and cooly consider the means not only of saving the Union, but of saving the Constitution, and of saving it unmutilated by nullification on the one hand, or consolidation on the other.

He had been equally grieved and surprised at the abstract doctrines of the Proclamation, as he understood them. He would fain persuade himself still, that the President had not intended to assert, in their full extent, the opinions which are deducible from that document: and when he reflected on the early devotion of that distinguished citizen, to the pure principles of Republicanism, and the many recent proofs he had given of his respect for the rights of the

States, he was almost tempted to suspect that some "cunning clerk" of the Federal school, entrusted, as is usual, with the adjustment of details, had abused the confidence of his superior. The President was not, and had never professed to be, a man of details;—he was a man of results—of action—and his long career of usefulness had afforded a happy illustration of the superior value of such talent, over the unprofitable, if not mischievous acumen of the subtle and metaphysical theorist. It was remarkable that whilst the objects of the Proclamation were unquestionably good, and the conclusions generally correct, the exposition and reasoning which led to them were highly erroneous. The premises embracing doctrines most repugnant of the true theory of our government, did not seem necessary in all cases, to the conclusions:—as for instance it was not necessary to deny the sovereignty of the States, in order to show that they had not a right at pleasure to secede. Certain it was, that if the President intended to promulgate the doctrines which the argumentative part of his Proclamation seemed to involve, the web was so curiously and ingeniously woven, that though there could not in the end be a doubt about its meaning, yet there was not a man, even the most intelligent, who did not find it necessary to read that argument again and again, before he could be satisfied as to its full scope and tendency. He knew very well the vagueness and fallacy of language, and how difficult it was in treating a theoretical abstract subject, to avoid misapprehension. This consideration admonished him of the probability that injustice might be done to the President in the construction of this state paper; but whilst he continued to understand it in the sense which he did, he was ready to protest against the erroneous principles it contained, and to contribute his mite in laying them low before the majesty of the true principles of the Constitution. But when he had said thus much, he wished it to be distinctly understood, that he should not concur in denouncing, as some gentlemen seemed eager to do, the President of the United States, whose integrity and patriotism he held in the highest estimation. When he remembered the signal proofs he had given, of a desire to confine the General Government, in its practical operation, within its appropriate limits, and felt himself constrained to admit, what no one indeed could deny, that his administration, take it for all in all, had been one of the best with which the country had ever been blest, he could not think of withdrawing his humble support from that individual, because he had fallen into a single error, however dangerous that error might be. Whatever might be thought as to the intent and meaning of the President in regard to the abstract doctrines discussed in the Proclamation, there could be no mistake about the practical character of his administration, which was such as had hitherto met the hearty approbation of the friends of State rights. When he reflected on the eminent services that citizen had rendered his country—how much the South, in particular, was indebted to him for the salutary measures of his administration, and how much they might yet expect from him, if a proper support were given him, he could not with-

draw his confidence from him, or unite, in any degree, with his secret or avowed enemies, in denouncing him to the people of Virginia. He would go as far as any man, in maintaining the principles of the Constitution; but it was not necessary for that purpose to assail the President, much less to hold him responsible for what, perhaps, he did not intend.

The leading object of the Proclamation was to show that a State, as such, has no right, other than such as belongs to any portion of people, to withdraw from the Union, and in support of that proposition it contended that the Federal Constitution is not a compact between separate and independent States, but resulted from the people of the United States, who were "one nation" when they formed it—such at least appeared to him the meaning of the following passages in that document:—"The unity of our political character commenced with its very existence. Under the royal government we had no separate character—our opposition to its oppressions began as united colonies. We were the United States under the Confederation, and the name was perpetuated and the Union rendered more perfect by the Federal Constitution. In none of these stages did we consider ourselves in any other light than as forming one nation." And again: "The people of the United States formed the Constitution, acting through the State Ligislatures, in making the compact, to meet and discuss its provisions, and acting in separate Conventions when they ratified those provisions; but the terms used in its construction, show it to be a Government in which the people of all the States, collectively, are represented." The next position assumed was, that the States are not sovereign under the Constitution, and "each State having expressly parted with so many powers as to constitute jointly with the other States, a single nation, cannot from that period possess any right to secede, because such secession does not break a league, but destroys the unity of the nation." These passages, which went, as he thought, to show that the Constitution is not a compact made between the States in their sovereign capacity, and that the States are not sovereign under its provisions, comprised his objections to the Proclamation. They were illustrated in that paper by a variety of references to the popular features of the Government, the pervading fallacy of which, was, that by an inversion of reasoning, the nature of the compact, and the character of the parties to it, were deduced from the mode of action of the Government to which that compact gave birth.

It could not, he said, be denied, that whilst the States of this Union were colonies of Great Britain, they were united by no direct tie whatsoever. They owed allegiance to the same crown, but were separate and distinct dependencies. They were less connected than are Scotland and Ireland since the Union under the British Government---for, those States, by their terms of Union, sit and act together, through their representatives, in the same parliamentary body; whereas the American Colonies had separate governments, derived from their respective charters or proprietory grants, and met each other neither in Parliament nor in any other common

assembly. Dr. Franklin, in his examination before the House of Commons, in 1776, said, "the Colonies are not supposed to be within the realm; they have Assemblies of their own, which are their Parliaments, and they are in that respect in the same situation with Ireland," which it would be recollected, was not then incorporated with England, by the act of union, but was a mere dependency. They had each within itself all the internal organization of complete governments, with no other restraint on their right of independent action, than the allegiance due to the crown, and when that ceased, they were as absolutely unconnected with each other, as would be Jamaica and Canada or St. Helena, if the island of Great Britain were suddenly sunk in the ocean.

It was true that the Colonies, in concerting measures for resisting the oppressions of the mother country, conferred with each other for years before the Declaration of Independence, through deputations from their Legislative Assemblies; but it was obvious that no formal connection, amounting even to an alliance, took place between them, previous to the adoption of the articles of confederation. The Massachusetts Circular, of June 1765, one of the earliest interchanges of opinion amongst the Colonies, and which led to the Congress at New-York in October following, merely recommended that *committees* should be sent from the several Assemblies, to consult together on the subject of their common wrongs. The General Congress, at Philadelphia, in 1774, as well as that of 1776, was composed of deputies chosen by the Colonial Assemblies.--- These delegates united, on various occasions, in making a joint declaration of their grievances and adopting addresses and petitions to the King and Parliament. They finally united in declaring themselves independent; but none of these acts, not even the last, could be regarded as an alliance affecting in any degree, the political character of the Colonies. By the Declaration itself, they are styled "free and independent *States*," "and that as free and independent states, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do." According to Mr. Jefferson's memoir of the debate on that occasion, it was urged "That if the delegates of any particular colony had no power to declare such colony independent, certain they were, the others could not declare it for them; the colonies being as yet perfectly independent of each other;" and the warmest advocates of the declaration said, in reference to the propriety of a previous confederation, "that it would be idle to lose time in settling the terms of alliance, till we had first determined we would enter into alliance." Some of the Colonies, and Virginia amongst the rest, asserted their independence prior to the general Declaration, and actually proceeded to organize new governments. On the 12th July, 1776, a few days after the Declaration of Independence, the original draft of the Articles of Confederation was first presented to the Congress, and after two years debate and consideration was ratified, on the 9th of July, 1778, by ten of the States, and subsequently by the

others---Maryland acceding on the 1st March, 1781. This compact, which was the first act of confederation between the Colonies or States, not only recognizes their previous sovereignty, but guarantees it for the future. In the third article of that instrument it is stated, that "The said States hereby severally enter into a firm league of friendship with each other, for their common defence," &c.; and again, in the second article, that "each State retains its sovereignty, freedom and independence," &c.---expressions which leave no doubt as to the sovereign character of the States under the confederation.

The States then, he said, were sovereign up to the time of the adoption of the Constitution. Was there any thing in the circumstances under which it was formed, or in the manner of its ratification, which tended to prove that the parties were not sovereign?---That instrument was framed by a Convention of Delegates from the Legislatures of the several States assembled at Philadelphia, on the second Monday in May, 1787, in pursuance of a resolution of the Congress of the confederation, adopted on the 21st of February of the same year. The Constitution was an amendment of the Articles of Confederation and adopted as a substitute for it by the same parties. The Resolution of Congress, calling the Convention, states it to be "for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures, such alterations and provisions therein, as shall when agreed to in Congress, and confirmed by the States, render the Federal Constitution adequate to the exigencies of government, and the preservation of the Union." The 13th Article of the Confederation declares that those Articles "shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration, at any time hereafter, be made in any of them, unless such alteration be agreed to by a Congress of the United States, and be afterwards confirmed by the Legislatures of every State."---The Convention laid the work of their hands before Congress in conformity with the foregoing provision, and advised "that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification." Since then the Articles of Confederation could not be altered without the assent of every State; and the Constitution was, in fact, an alteration made in the specified manner, it followed, he said, that the alteration or in other words, the Constitution, could only be adopted by the parties to the confederation, which had already been shown to have been sovereign.

In ratifying the Constitution, the people of each State assembled in Convention, were regarded as forming a separate and distinct political body---not a party to the compact, nor bound by it, until its assent had been expressly given. It was provided that the new government should be organized as soon as nine States should have assented; and had the other four States rejected it, they would, in no degree, have been bound, in consequence of its ratification by the others.

This was clearly shown by the historical fact, that some of the thirteen States did not come into the Union, until after the Federal Government went into operation. North Carolina did not ratify the Constitution until the 1st of August, 1788, and Rhode Island not until the 16th of June, 1790, whereas the new Government was organized without the participation of these two States, and commenced its action on the 4th of March, 1788. In the interval these States kept entirely aloof from the Union, and so far from considering themselves subject to the Federal Constitution, or under any obligation to accede to it, some of the ablest debaters in the Convention of North Carolina, contended that as the Articles of Confederation could not be altered without the assent of every State, any one State had a right to insist on their being adhered to by all. This was unquestionably true, and the difficulty could only have been removed by the common consent of all the States, which was at last obtained. The Constitution was not regarded as resulting from the people of the States collectively, nor was it submitted for their ratification as one mass. The several State Conventions were not mere agents or conveniences, for collecting the general will of the American people, but constituted the separate and independent bodies politic, who were to become parties to the compact. Had the Constitution been submitted for the adoption of the people of the United States, as one people, there would have been an absurdity, in allowing to each of thirteen different masses of that people a right of rejecting it. On the contrary, if that were true, whilst these masses might be used as convenient sub-divisions for ascertaining the general will, the several majorities and minorities, should have been brought together, the balance struck, and the decision of the aggregate majority been made obligatory on all. These masses were of very unequal size, so that nine of the smallest of them, did not contain a majority of the population of the thirteen, and it might have happened, according to the mode of ratification adopted, that the Constitution might have been carried into effect against the will of a majority, by a minority of the whole, even supposing the people of the nine masses to have been unanimous in its favor. Had the majorities in those masses or States been small, an extremely small minority of the whole would have established the government, in opposition to the non-adopting masses, having a majority of the population exclusive of the large dissenting minorities in the adopting masses. On the other hand, five of the smallest masses, might have defeated the Constitution, and if the majorities were inconsiderable, a fraction above one half of their population would have had equal power. If the Constitution had been regarded as emanating from one people, or intended to form a government or compact for one people, it would have been obviously just, that the concurrent voice of a majority of that people, should be necessary, either for its rejection or adoption; and as the mode of ratification pursued was wholly subversive of this principle, it was fair to treat it as an evidence of the purely Federal character of the compact.

This principle of ratification by the States, as such, was not only acted on at the adoption of the Constitution, but was recognized and perpetuated in that instrument by the provision, requiring the assent of three-fourths of the States, acting through their Legislatures or Conventions of their people, for its amendment: whereas, if the compact had resulted from one integral community, or been intended to establish a government for one collective people, the power of amendment ought to have been lodged in a majority of that people.

The social compact, he said, was the primitive means by which individuals were formed into a body politic. When thus combined, the sovereign power resided in a majority of the people, who, according to our Bill of Rights, had the authority to reform, alter or abolish the government. It would be admitted, he presumed, that the people of Virginia were united by a social compact, and had a government of their own, previous to the confederation and the adoption of the Federal Constitution, which was an amendment of it. That Constitution made an important change in the government of Virginia, and he would ask how that change could have been sanctioned or made valid, otherwise than by the assent of a majority of the people of Virginia, constituting the sovereign power of the State. As the power of altering the constitutional compact resided only in the people of the State, their action in ratifying the Federal Constitution, which so materially affected that of the State, must have been exerted in their distinct, sovereign capacity.

The sovereign power of one State had no right to interfere in forming or altering the constitution of another State. Virginia and Maryland, for instance, were distinct political communities, and whilst each might modify its own constitution, neither could interfere with the constitution of the other; nor could all the States unite in modifying the constitution of each. The social compact must precede the constitutional compact. This was necessary to give unity to the people, and create the right to exert their will by a majority. Before the people of all the States, collectively and at large, could form a constitution for the whole, they must previously have existed, not as distinct political bodies, but as one political body, bound together by a general compact, whereby the supreme power was concentrated in a majority. He presumed it would not be contended, that the people of the states, at the adoption of the Constitution, were thus consolidated into one community by a social compact; and, without such pre-existing compact, even the confluent voice of a majority, collected through the machinery of the States, could not rightfully have originated or established a single government for all.

The only argument, he said, which could be opposed to these illustrations of the purely federative character of the Constitution, was that derived from the words in the preamble of that instrument: "We the people of the United States, &c. do ordain and establish," &c. It was perfectly fair to construe this phrase, as meaning the people of the several States, acting in their respective sovereign capacities. The language no more implied a collective

action than it did a several action. It was equally susceptible in itself of either interpretation, and standing alone it proved nothing. Its meaning was controlled and settled by the history of the Constitution. The people of the United States in one sense did ordain and establish the Constitution; but as they existed in distinct communities and not in one general community, it must have been intended that they acted in the former character, and not in the latter. It was unnecessary and inconvenient, in a preamble so short and general as this, to describe minutely the parties to the instrument, or the mode in which it was formed, when both of these circumstances were so satisfactorily explained by historical facts. The expression was, doubtless, selected for its brevity, without apprehension of its being misconceived; and it was, probably, for the same reasons, that the preamble of the Articles of Confederation was made to read, "Whereas the Delegates of the United States of America," &c. The *Delegates* of each State agreed to the Articles of Confederation, precisely on the same principle that the *people* of each State ratified the Constitution; and yet it would not be denied, that the respective delegations, in acceding to the Confederation, acted severally, as States, and not collectively.

Having arrived at the conclusion that the Federal Constitution was formed by the States, as parties, in their sovereign capacity, Mr. B. said, he would now proceed to examine how far the sovereignty of each State was affected by the adoption of that instrument. A State or nation was ordinarily considered as sovereign, when it was free and independent of all other nations. The States of this Union had associated themselves by a common bond, so as to constitute, in reference to other nations, but a single nation, and had vested in the General Government such attributes as were necessary for establishing and maintaining the customary relations with foreign powers. To the other nations of the earth, we presented an undivided front. They could view us only as one sovereign people, and were no farther concerned in our internal relations, than to know to which department is entrusted the power of making war, peace and treaties. But the parties to this confederacy were not consolidated, and the character and rights of the States, in relation to each other, and not in relation to foreign powers, constituted the important subject of present inquiry. And here it was necessary to distinguish clearly between sovereignty and the government or agents, who at the will and pleasure of that sovereignty, exercise, for the time being, its attributes. Sovereignty, he said, was that power in every independent State which governs in the last resort, and has an acknowledged right to change without violence, the fundamental laws of the community. In England, that power resided in the Parliament; for, although, in theory, there were constitutional checks, yet if Parliament should alter or abrogate them, it would be considered as revolution in the people to resist it. In other governments this supreme power was lodged in privileged orders, more or less numerous—sometimes in the crown—and just in proportion to the distance it was withdrawn from the

people, and to the difficulty of their recovering it, did the government assume the character of a despotism. In our own favored country, it was acknowledged, in the language of our Bill of Rights, " that government is or ought to be instituted for the common benefit, protection, and security of the people," " and that a majority of the community hath an indubitable, unalienable, and indefeisible right to reform, alter or abolish it." Sovereignty then resided in a majority of the people, not in the government, which was its mere agent and depositary for the time being. All the attributes of sovereignty, necessary for the purposes of independent government, were entrusted to the public functionaries, and exercised by them; but they could at any moment be resumed either wholly or partially, by the supreme power or majority of the people in whom they must consequently be considered as inherent and unalienable.

Some of the attributes of sovereignty were visible in the State Government, and some in the Federal Government; but as the supreme power, according to the principles he had laid down, did not reside in either, where, he would ask, did it reside? Not in a majority of the people of all the States, collectively, for there was no mode prescribed, by which they could act, as a majority, in altering or abolishing the government. On the contrary, the power of altering the General Government was lodged by the Constitution, in three-fourths of the States; and yet, although that power was the chief characteristic of sovereignty, it could not be maintained, that the sovereignty of the whole Union, resided in the three-fourths of the States. It happened, at present, that one-fourth of the States, contained a greater population than the remaining three-fourths; and to contend that the sovereign power of the nation was in the latter, would be to contend that it was in a minority of the people. Now it was certainly true, that three-fourths of the States, comprising a minority of the population of all, might change the Federal Constitution; but this, so far from showing that the inherent right of a majority was violated in our political system, furnished a conclusive evidence of the fallacy of that theory, which represents the States, *in their internal relations*, as one nation, having but one sovereign power, instead of twenty-four sovereign powers. If the States, respectively, were not sovereign, as to each other, but were integral parts of a nation, having a common government, the sovereign power of that nation, according to the constitutional compact, resided in a minority, or it resided no where. But if, on the other hand, it were admitted, that the Federal Constitution was a compact between sovereign States, the difficulty would, at once, be solved, and the authority vested in this arbitrary number of the States, would be seen to be merely a conventional arrangement for altering the terms of a league and not of a social compact.

Whilst he contended, he said, that each State,—by which he meant a majority of the people of the State, had retained its sovereignty entire, and that sovereignty was in its nature indivisible, he would freely admit, that each State, by virtue of voluntary engagements, had imposed certain restraints on the exercise of its so-

vereignty. The sovereign power of Virginia, for instance, had created a State Government, and vested in the Legislative, Executive and Judicial agents administering it, just so many powers as were necessary for controlling the local and internal affairs of the Commonwealth. That same sovereign power had agreed by compact, with the respective sovereign powers of the other States, to vest a portion of its attributes, provided every other State would vest an equal portion in a General Government, which should exert the authority confided to it, as the common agent of all, in superintending the external and foreign relations of the States. These two governments, between which were distributed the necessary powers appertaining to independence, constituted together, a whole government for the State of Virginia, and, in order to point out the restraints on her sovereignty, it was necessary to examine how far the majority of the people of the State could exercise, at pleasure, the power of changing this government in either of its branches. In the first place, it was observable that the State—by which, always, he meant a majority of the people of the State—could not rightfully establish any other than a republican form of government, which was guaranteed to each State by the Federal Constitution; and whilst it was ordinarily the right of sovereignty to establish any kind of government whatever, the exercise of this right was restrained by the Federal compact; and Virginia could not, if she willed it, without violation of her faith, transform her government into a monarchy. The States erected out of the north western territory were liable to the additional restraint, of not being at liberty to change their fundamental laws so as to contravene the Ordinance of 1787; one of the provisions of which, prohibited the introduction of slavery.

Again; the State of Virginia could not change the federal branch of her Government, without the consent of three-fourths of the States; and those three-fourths might change it, except in one feature, without her consent, and even against the unanimous voice of her people. Nay, more, as every change of the Federal Constitution produced a corresponding change in the State Government, either enlarging or restricting its authority, three-fourths of the States, by amending the Federal Constitution, might, in effect, alter the local branch of her Government as well as the federal branch; and this too, without her consent, and even against the unanimous wish of her people.

These restraints did not, however, impair the sovereignty of each State, in relation to the others; and in order to see what circumstances had that effect upon a State, he would refer to the law of nations, which was emphatically called "the law of sovereigns." Vattel, he said, laid it down, (B. I. sec. 10,) that "several sovereign and independent States may unite themselves together by a perpetual confederacy, without ceasing to be, each individually, a perfect State. They will together constitute a Federal Republic; their joint deliberations will not impair the sovereignty of each member, though they may, in certain respects, put some restraint

on the exercise of it, in virtue of voluntary engagements. A person does not cease to be free and independent when he is obliged to fulfil engagements which he has voluntarily contracted." In the following section, it was said, "but a people that has passed under the dominion of another, is no longer a State, and can no longer avail itself directly of the law of nations." Again, (B. II., sec. 172,) "Equal treaties are those in which the contracting parties promise the same thing, or things, that are equivalent, or finally, that are equitably proportioned, so that the condition of the parties is equal"—and, (in section 174,) "Equal alliances, those in which equal treats with equal, making no difference in the dignity of the contracting parties." In the same author, (B. II. section 175,) it was said, "unequal alliances are subdivided into two kinds; they either impair the sovereignty or they do not. The sovereignty subsists entire and unimpaired when none of its constituent rights are transferred to the *superior* ally, or rendered, as to the exertion of them, dependent on his will." "But if either of the contracting parties engages not to make war against any one whatsoever without the consent or permission of an ally, *who on his side does not make the same promise*, the former contracts an unequal alliance, with diminution of sovereignty." From these passages, he said, some rules, which had an important bearing on the subject under consideration, might be deduced. It might be regarded as a maxim, that the sovereignty of a State was unimpaired by any engagements, not destructive of its separate organization, which had been entered into, *voluntarily* and without force or constraint, and it was unnecessary to add, that the reciprocal obligations of the States, were purely the result of choice, and not necessity.

Again; it seemed to be a clear rule that sovereignty was not impaired by an *equal* alliance, whatever might be its character in other respects; and if ever there existed an equal alliance, that which resulted from the Federal Constitution was such. The contracting parties treated with each other as equals, acknowledging no difference in dignity, and "promised the same things" for the same equivalents. Each State vested some of its powers, in a General Government, and every other State made an equal contribution. Each State agreed, in a prescribed mode, to allow the General Government, to act directly on its citizens—not to make war, peace and treaties, &c. without the concurrence of its associates—and even in certain cases, before referred to, to submit to some restraints in the exercise of its sovereign power to change its form of government—but every other State agreed to make precisely the same concessions. The only instances in which there was an apparent inequality in the terms of the compact, where the provisions which apportioned representatives, direct taxes, and electors of President and Vice President, among the States, according to population, instead of allowing an equal weight to each. But when the intimate nature of the Union, which created a practical government, was considered, this would be found to be a perfectly just arrangement. It brought no one State under the dominion of another, and ad-

mitted no superiority in either. If the larger States enjoyed a more numerous representation and a greater electoral suffrage, they also paid a greater share of the taxes and recognized the equality of the smaller States in the Senate. It was, in short, precisely that equitable apportionment spoken of by Vattel, which made the condition of the parties equal. If further authority on this point were wanting, it might be found in Montesquieu, who, after describing a "confederate republic" as "a Convention by which several smaller States agree to become members of a larger one;" and reciting as one of the advantages of this form of Government, that "the confederacy may be dissolved and the confederates preserve their sovereignty," mentions, (1 vol. p. 183,) as the best model of such a federal republic, the Lycian confederacy, which consisted of twenty-three towns or republics, *unequally* represented in "the common council"—those of the largest class being entitled to three votes, some to two votes, and others to one.

Another rule was, that the sovereignty of a State was not impaired, even where the alliance was unequal, unless some of its attributes were "transferred to a superior ally, or rendered as to the exertion of them dependent on his will." Those, he said, who denied the entire sovereignty of the States, seemed to regard the Federal Government as an extraneous power, operating on a State against its will—and the President in his Proclamation, asked—"how then can that State be said to be sovereign and independent, whose citizens owe obedience to laws not made by it?"—In reply, it might be said, that although a law of the Federal Government were not made immediately by the State, yet as it could only be made in pursuance and by authority of an instrument to which the State had given its voluntary assent, the law was thus derivatively clothed with the sanction of the State. But the truth was, that every State participated in the making of such law. The Federal Government was administered by the joint will and deliberations of the parties, and the act of all was the act of each. Virginia, for instance, had agreed that Congress should have the power of taxation; and when a direct tax was laid, although her representatives might have unanimously voted against it, she could not theoretically, be said to be taxed against her consent. Upon the same grounds, too, it might be maintained, in those cases to which he had before referred, where three-fourths of the States could change the form of government, contrary to the will of any one State, that as such State participated in the councils which led to the change, its assent to such change was constructively obtained. This, he said, was the great principle on which the American Revolution was founded. Our ancestors threw off their allegiance to the British crown, because the colonies were taxed without their consent. They denied the right of Parliament to tax them, because they had no representatives in that body. Had they been allowed to sit in Parliament, and vote through their representatives, although they might always have voted in a minority or negatively, it was manifest, from the resolutions, petitions, and declarations of right, of that day, that they would no lon-

ger have considered themselves aggrieved, or taxed *without their assent.*

It was a very common argument, and urged in the Proclamation, that as the power to make war, peace, treaties, and to levy taxes, appertained to sovereignty, and were surrendered by the States to the Federal Government, their separate sovereignty was thereby impaired. But those powers did not constitute sovereignty itself. They were merely some of those visible, active attributes of it, which were always exercised by the government. If Virginia were an isolated sovereign nation, those same powers would, doubtless, be vested in her government; although the sovereign power would, in that case, confessedly be in the people themselves. Even under existing circumstances, they were, in fact, lodged in one branch of her own government—the federal branch—and as she participated through her immediate agents, in the administration of that government, she might be regarded, so far from having surrendered those powers, as being in the actual enjoyment of them, conjointly with others, over whose rights, of a similar character, she exerted an equal, reciprocal control. It was worthy, moreover, of remark, that under the confederation, when the States were unquestionably sovereign, all of these powers, except that of taxation, were granted to Congress, and prohibited to the States, to nearly the same extent as now, by the Federal Constitution—the chief difference being in the mode of exercising them.

Another argument, he said, which had been advanced by the Proclamation against the sovereignty of the States, was, that they had ceded to the United States the right to punish treason—that "treason is an offence against sovereignty and sovereignty must reside with the power to punish it." He denied that treason was an offence against sovereignty, but insisted that it was an offence against government. The maxim had originated where sovereignty and government, as in England, were held to be convertible terms. If it were true and proved any thing, it would prove that sovereignty, under our system, resided in the government. And not only so, but it would prove that sovereignty was divided between two governments, for the states had the right to punish treason, as well as the United States—both of which conclusions were erroneous, for sovereignty was indivisible, and resided in the people.

Much stress had been laid on those features of the Federal Government which wore the aspect of nationality.—It was said in the Proclamation, that "We are one people in the choice of the President and Vice President"—that "the electors of a majority of States may have given their votes for one candidate and yet another may be chosen. The people, then, and not the States, are represented in the Executive branch." It was true that a minority of the states were entitled from their greater population to a majority of the electors, and could consequently choose President and Vice President. It happened at this time that one-fourth of the States had a majority of the electoral votes and of course a decisive voice in that election. But on the other hand, that same fourth of the

States, or six States, which had a majority of the electoral votes had also a majority of the *people* of the United States. Upon the general ticket system which was now prevalent, it might happen that the ticket of electors, favorable to one candidate and having power to elect him, might be carried by bare majorities of the people in those six States, while the almost equivalent minorities, and the whole population of the other States, which together would amount to within a fraction of three-fourths of all the people of the United States, might have voted in favor of the unsuccessful candidate. If, then, the fact that a President might be chosen against the wishes of a majority of the States, proved that the *States* were not "represented in the Executive branch," it must likewise be admitted, that the fact that a President might be elected against the will of a majority of the people, proved that the *people* were not represented in the Executive branch.

Another feature mentioned by the Proclamation as indicating nationality, was, that the Representatives in Congress "are all Representatives of the United States, not Representatives of the particular State from which they come." He said, he denied that the Virginia Delegation represented the people of other States, any more than Senators represented other States. The object in view, in the organization of the House of Representatives, was to give to each State a weight proportioned to its population; and consistently with that object, no other convenient, practical mode could be devised, than that of voting promiscuously. Admitting the nationality of this feature, it was counterbalanced by the federative principle on which the Senate was based, and which was so cautiously guarded by the constitution that it could not be changed, without the *express* consent of every State.

An argument in favor of consolidation, was sometimes founded on the direct operation of the General Government on the citizens of the States; when, if it were a confederacy, it was said, it ought to operate on the States, in their collective capacity; but there was neither precedent nor principle to support the idea. There was one common fallacy pervading all illustrations, which went to deduce the character of the parties to the constitutional compact from the administrative operation of the government. Whether the parties were sovereign or not, was to be tested by history and the principles he had been examining. If they were sovereign, they might by compact with each other, establish a common government, exhibiting every diversity of form, even the traits of democracy, without thereby impairing their sovereignty; and hence it was obviously an inversion of all correct reasoning, to argue from the mode of action of the government, that the parties either were or were not sovereign.

Having considered the character of the Federal Constitution, and of the States who are parties to it, he said, it was his intention next to inquire, by what means and under what circumstances this compact might be dissolved; or in other words, how and when a State might secede. He said he would gladly have avoided this

subject of secession, and wished to discountenance every thing that could create "a suspicion, that the Union would under any circumstances be abandoned;" but, unhappily, there was too much reason to fear that we could no longer shun this distracting question, and were about to have it practically forced upon us. The remedy of South Carolina, thus far, was *Nullification*, and she had declared that it was a peaceful remedy. He believed the people of that State, had embarked in it under a conviction that it was a pacific measure. But if it should fail, as fail it must, and more especially should it lead to any, the slightest, collision between the authorities of that State and the Federal Government, could it be doubted, that the people of Carolina, whatever their views in the first instance, would then be prepared for every extremity. One of their popular orators, in a recent harangue, while lamenting the apathy with which the neighboring States in the South looked on at the contest, seemed to rely with prophetic assurance on the effect of any effort on the part of Congress to enforce the laws, and pointed to the consequences of the Boston Port Bill, in arousing and uniting our forefathers against the tyranny of England. In fact, Carolina might be said to have already seceded, conditionally—having declared that upon the slightest attempt at coercion, she would consider herself as seceded; and, as was the case in a conditional declaration of war, as soon as the contingency contemplated should happen, her withdrawal from the Union would be, *ipso facto*, consummated. It was time, therefore, to determine the true character of this right. It had been said in the course of that debate, with much plausibility, that settle it as we might, neither posterity nor contemporaries would abide by our construction, unless it should coincide with their interests. But he could not close his eyes to the immense importance of giving an early and true direction to the public mind. When opinion had become fixed in regard to a fundamental principle, and something like unanimity brought about by long reflection, it was comparatively easy, when the proper occasion should arrive, to reduce it to practice without that embarrassment or collision which never failed to attend new and unthought-of exigencies. Do what we might for its suppression, it would be discussed and would be settled by public opinion throughout the Union.

He had, he said, endeavored to show that the States were sovereign at the formation of the Union, and that they were sovereign under it. If that were true, it followed, as a necessary consequence, that the Federal Constitution was a compact between independent States or nations, and the rights and obligations which resulted from it to the parties, were to be ascertained by the general principles of the law of nations. That code was the "law of nature applied to nations," and constituted, according to Vattel, "that system of right and justice which ought to prevail between nations or sovereign States." No one, who admitted the sovereignty of the States, would deny that the relations subsisting between them, were to be determined by the rules laid down in approved treatises on national

law. The Federal compact was not an ordinary treaty, league, or alliance, but was an intimate constitutional union, establishing a common government for certain general purposes between the parties. The closeness of the connexion and the mutual dependence of the destinies of the one upon the other, gave rise to some obligations which did not exist in the case of a mere treaty respecting transient interests. A simple conventional arrangement, embracing a few points of intercourse between States, might be broken without serious consequences; but the more intimate the tie, the more disastrously would its severence affect the parties; who for that reason were under the stronger obligations to exercise patience and forbearance under real or supposed wrongs—to exhaust all pacific means of redress, and to appeal from the compact only when their happiness imperiously demanded it. He was willing, however, to consider the Union as resting simply on the principles of a treaty of alliance; and when those principles came to be examined, he felt assured it would appear that a more safe and durable basis for our Republican edifice, could not be found. Much misapprehension seemed to prevail in regard to the obligations of a treaty. Some had declared that a sovereign State had a right, at any time, at her own pleasure, to withdraw from an alliance founded on a treaty, and upon this assumption rested, as he understood, the doctrine of *peaceable secession*—the fallacy of which, in the sense in which it was urged, might be easily exposed. He regretted extremely that the President, in his Proclamation, had seen fit to deny, in any degree, the absolute sovereignty of the States; because, admitting it in its utmost latitude, and putting the Federal Compact on the footing of a treaty of alliance, he might still have arrived at the legitimate conclusion, that a State had no right to terminate that alliance, whenever she thought proper, without good and sufficient cause. The intimacy of the alliance, as he had already remarked, did not change the principle, but merely added to the strength of the obligation to observe it scrupulously, and to abandon it only for injuries and violations of greater magnitude.

It was laid down in Vattel, (B. II. sec. 164—200,) that "as the engagements of a treaty imposed on the one hand a perfect obligation, they produced on the other a *perfect right*. The breach of a treaty is, therefore, a violation of the perfect right of the party with whom we have contracted." Again; it is said by the same writer, (B. III. sec. 26,) that "in order to determine what is to be considered an injury, we must be acquainted with a nation's *rights*, properly so called—that is to say, her *perfect rights*. Whatever strikes at these rights, is an injury and a just cause of war." In short, it was a settled point in the law of nations, that when a compact, whether known by the name of treaty, alliance, league, confederation or union, was formed between sovereigns, there resulted to each party a perfect right to compel the other to perform its stipulations. Another rule, equally unquestionable was, that the violation of a perfect right, or in other words, a breach of the compact, furnished good cause of war to the party injured. He would ask, whether,

subject of secession, and wished to discountenance every thing that could create "a suspicion, that the Union would under any circumstances be abandoned;" but, unhappily, there was too much reason to fear that we could no longer shun this distracting question, and were about to have it practically forced upon us. The remedy of South Carolina, thus far, was *Nullification*, and she had declared that it was a peaceful remedy. He believed the people of that State, had embarked in it under a conviction that it was a pacific measure. But if it should fail, as fail it must, and more especially should it lead to any, the slightest, collision between the authorities of that State and the Federal Government, could it be doubted, that the people of Carolina, whatever their views in the first instance, would then be prepared for every extremity. One of their popular orators, in a recent harangue, while lamenting the apathy with which the neighboring States in the South looked on at the contest, seemed to rely with prophetic assurance on the effect of any effort on the part of Congress to enforce the laws, and pointed to the consequences of the Boston Port Bill, in arousing and uniting our forefathers against the tyranny of England. In fact, Carolina might be said to have already seceded, conditionally—having declared that upon the slightest attempt at coercion, she would consider herself as seceded; and, as was the case in a conditional declaration of war, as soon as the contingency contemplated should happen, her withdrawal from the Union would be, *ipso facto*, consummated. It was time, therefore, to determine the true character of this right. It had been said in the course of that debate, with much plausibility, that settle it as we might, neither posterity nor contemporaries would abide by our construction, unless it should coincide with their interests. But he could not close his eyes to the immense importance of giving an early and true direction to the public mind. When opinion had become fixed in regard to a fundamental principle, and something like unanimity brought about by long reflection, it was comparatively easy, when the proper occasion should arrive, to reduce it to practice without that embarrassment or collision which never failed to attend new and unthought-of exigencies. Do what we might for its suppression, it would be discussed and would be settled by public opinion throughout the Union.

He had, he said, endeavored to show that the States were sovereign at the formation of the Union, and that they were sovereign under it. If that were true, it followed, as a necessary consequence, that the Federal Constitution was a compact between independent States or nations, and the rights and obligations which resulted from it to the parties, were to be ascertained by the general principles of the law of nations. That code was the "law of nature applied to nations," and constituted, according to Vattel, "that system of right and justice which ought to prevail between nations or sovereign States." No one, who admitted the sovereignty of the States, would deny that the relations subsisting between them, were to be determined by the rules laid down in approved treatises on national

law. The Federal compact was not an ordinary treaty, league, or alliance, but was an intimate constitutional union, establishing a common government for certain general purposes between the parties. The closeness of the connexion and the mutual dependence of the destinies of the one upon the other, gave rise to some obligations which did not exist in the case of a mere treaty respecting transient interests. A simple conventional arrangement, embracing a few points of intercourse between States, might be broken without serious consequences; but the more intimate the tie, the more disastrously would its severence affect the parties; who for that reason were under the stronger obligations to exercise patience and forbearance under real or supposed wrongs—to exhaust all pacific means of redress, and to appeal from the compact only when their happiness imperiously demanded it. He was willing, however, to consider the Union as resting simply on the principles of a treaty of alliance; and when those principles came to be examined, he felt assured it would appear that a more safe and durable basis for our Republican edifice, could not be found. Much misapprehension seemed to prevail in regard to the obligations of a treaty. Some had declared that a sovereign State had a right, at any time, at her own pleasure, to withdraw from an alliance founded on a treaty, and upon this assumption rested, as he understood, the doctrine of *peaceable secession*—the fallacy of which, in the sense in which it was urged, might be easily exposed. He regretted extremely that the President, in his Proclamation, had seen fit to deny, in any degree, the absolute sovereignty of the States; because, admitting it in its utmost latitude, and putting the Federal Compact on the footing of a treaty of alliance, he might still have arrived at the legitimate conclusion, that a State had no right to terminate that alliance, whenever she thought proper, without good and sufficient cause. The intimacy of the alliance, as he had already remarked, did not change the principle, but merely added to the strength of the obligation to observe it scrupulously, and to abandon it only for injuries and violations of greater magnitude.

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be brought within the jurisdiction of the Supreme Court, that tribunal, which was intended as an additional safeguard of the rights of the citizen against unconstitutional measures, ought first to be appealed to. Although it was true that the Supreme Court was not an arbiter between the States in questions affecting their rights under the compact, yet, in such cases as might be brought within its jurisdiction, it had ample power to afford protection to any citizen, and of course, to all the citizens of a State, which was as much as could be desired. As an amendment or alteration of the Constitution, in the mode provided in that instrument, offered another means of redress, recourse should, in like manner be had, or at least attempted, to that method of correction. Until these channels of relief had been closed, it could not be said that all the Departments of the Government had concurred in the alleged usurpation, or that a withdrawal from the Union was the only remedy left; and hence the duty of a State to make these reasonable efforts, before proceeding to extremities, amounted, in general, to a perfect obligation.

A State could not, he said, secede without injury to the co-states, until she had first proposed equitable terms of separation, in regard to the public property within her limit; and without going into details, he would merely say, by way of illustration, that a State would be bound to reimburse the United States for expenditures on fortifications and other public works—due allowance being made for the quota contributed by the State itself to the common fund. In the case of Louisiana, which was purchased at the price of fifteen millions of dollars, for the purpose of being erected into a member of the Union, it would be but just that this sum should be refunded to the United States. Similar conditions might properly be imposed on States, within whose limits, a portion of the public lands were situated.

Under no circumstances would a State be entitled to secede until she had, by fresh negotiations and treaty, settled on a satisfactory basis, or offered to do so, the future relations to subsist between her and the co-states. In determining the character of these relations, a field would be opened for the exercise of another class of rights on the part of the remaining States of the Union, the general tenor of which would be explained by a passage from Vattel, (B. II. sec. 180)—"If a weak State attempts, without necessity, to erect a fortress which she is incapable of defending, in a place where it might become very dangerous to her neighbor, if ever it should fall into the hands of a powerful enemy, that neighbor may oppose the construction of the fortress." In the same manner, he may oppose the forming of a highway that opens to an enemy an entrance into his State. It was upon this principle that the United States, during the administration of Mr. Monroe, asserted a right to interfere in the fate of Cuba; and upon the same ground of self-preservation and security they might, in anticipation of a dismemberment of the Union, exact from Louisiana, for instance, such conditions, although unequal, as might be necessary to prevent this strong hold from falling into the hands of a foreign power.

Viewing the position of South Carolina, in connexion with the principles he had laid down, he did not think she had a right to secede. He admitted, that there had been a perversion of the spirit and intent of the Constitution, but it was not "stampt with a final consideration and deliberate adherence," which was admitted to be necessary by the Report of '99. On the contrary, there never was a period, at which the abandonment of the obnoxious measure, had seemed so probable as now. She had not resorted to all the means of redress which were open to her by the forms of the Constitution; nor had she proposed any terms or entered into any negotiations as to the future intercourse between her and the co-states, in the event of her seceding. She had shown less respect to the other States, and a less conciliatory spirit, than did North Carolina, under the confederation, when her convention, having decided not to ratify at that time the Federal Constitution, adopted a resolution—"That it be recommended to the Legislature of this State, that whenever Congress shall pass a law for collecting an impost in the States ratifying the Constitution, this State enact a law for collecting a similar impost on goods imported into this State, and appropriate the money arising therefrom to the use of Congress." South Carolina on the contrary, had not only refused to pay any part of the impost laid by the Congress, but had made no provision for laying any impost herself in aid of the General Government, and had in effect declared her ports free. But whilst he thought South Carolina could not, under existing circumstances, withdraw from the Union, without doing injustice to the other States, (many of whom had not concurred in the infraction,) for which they might demand reparation, he was, nevertheless, no advocate of force. He was convinced that the Union could never be preserved by the compulsion of its members. When a State had resolved on secession, even without cause, whilst the *right* might be denied, there was but little advantage in endeavoring, by force, to prevent the act. Indemnity and reparation might be exacted—but no human power could restore the broken altars, and heal the bleeding members of the Union. Should a State attempt to secede without sufficient cause, the alternative would be presented to the other States, either to compel an adhesion, which could only be done according to the rules of war, or to waive that right and permit the State to secede peaceably. The latter alternative he would always choose, unless some unpardonable obliquity in the course of the State should render forbearance impossible.

But, whilst he was opposed, from considerations both of policy and feeling, under almost all conceivable circumstances to the employment of force against a State, he would not deny the right of the co-states, under proper circumstances, to use coercion, nor did he even comprehend the meaning of a *peaceable* right of secession. If it meant a right to dissolve the compact at will and pleasure, it was clearly incompatible with the principles he had laid down. If it meant that there were cases in which the one party should allow the other peaceably to secede, it was a misapplication of terms, in which a mere feature of policy was made the characteristic of a

right. Secession was an act. It might or might not be founded in right. It might be attended with peace or attended with force, and therefore called a peaceable or forcible act, but not a peaceable or forcible right. Some had contended that the act might be peaceable, though war should follow. But, as he knew no particular formality which constituted secession, he looked upon it as one continued act, not complete until all opposing difficulties had been removed.

On the other hand, he did not put secession on the footing of rebellion or revolution. The latter he understood to be resistance by a fractional part of one integral, consolidated body politic, against the established authorities, which was punishable according to the municipal laws respecting treason. The former was the act, whether right or wrong, of a sovereign, which, whatever restraints may have existed during the continuance of the compact, was entitled upon the renunciation of that compact, to be treated as a sovereign, and to be punished, if punished at all, according to the usages of war, under the law of nations. It was a fallacy to say, that if a State had a right to secede at all, she had a right to secede even without cause, for he had shown that there must be a good and sufficient cause before the *right* accrued: but it was true, as a necessary consequence of the sovereignty of the States, that when a State had resolved to secede, even without cause, she was entitled to be treated by the co-states as a sovereign power, subject to war, but not to the pains and penalties of treason. In the case of revolution, the established authorities must decide whether the complaint of the rebels was just, and whether concessions should be made, or whether the insurrection should be suppressed. In the case of secession, the like judgment must be passed by the one party, in reference to the other party abrogating the compact otherwise than by mutual consent. The circumstances which would justify the one act would justify the other, being in either case, a perversion of the powers vested in the government, or a usurpation of powers not vested, to the intolerable oppression and injury of the parties. The only distinction of any practical value was, in reference to the mode of settling the difference or conducting the contest growing out of it. If it were held to be revolution, the citizens acting in obedience to the State authorities and in defiance of the Federal Government, would be liable to be hung for treason. If it were secession as he had defined it, the State would be attacked as one body and treated as an enemy under the law of nations. The power of the government was perhaps as strong on the latter principle as on the former; and as to the maintenance of the public authorities, it was a matter of indifference which was established as the true doctrine; but in reference to the States, it was an object of some importance that a State, if ever reduced to the extremity of resisting, should enjoy the right to shelter her citizens under her own flag and fight the battle of freedom according to the liberal usages of war. This was the only point of difference worth contending for, and but for this gentlemen might call it revolution or whatever else they pleased.

He said, he would now proceed to consider how far *nullification*, as a *constitutional* remedy, was compatible with a political system, founded on the principles he had been contending for. He understood the doctrine of nullification to be the assertion of a right on the part of a State continuing to be a member of the Union and subject to the Federal Constitution, to annul and make void within its territories, a law of Congress, believed by such State to be unconstitutional, attended by a corresponding obligation on Congress to submit the matter to a General Convention of the States, and in the meantime to suspend its execution. The authors of this doctrine could find no principle of our government, or provision of the Constitution which gave to a State the right to put a veto or negative on a law of the General Government. The obvious effect would be to place a majority of the States under the control of a minority—to subject twenty-three States to the will of a single State, for without unanimity no law could be enforced. In fact to suspend the execution of many laws would virtually be equivalent to a repeal of them. Had Massachusetts, for instance, raised the embargo in the port of Boston, the whole volume of interdicted commerce would have been poured into that city, and a measure deemed so important by the government, would have been totally defeated. Should Charleston be declared a free port the revenue laws would, in effect, be abrogated, for no merchant would import goods into any other place where he would have to pay an average duty of thirty-seven and a half per cent, when he might bring them into the country, through Charleston, duty free. That could not be considered a government which had not power to act on its constituents, whether they were individuals or States, and to suppose that the Constitution had given to a State the right to negative a law of Congress, would be to suppose the existence of a right which rendered all the powers of the government wholly nugatory.

The other feature of the remedy which made the veto effectual until three-fourths of the States in Convention, have overruled the interpretation put on the Constitution by the nullifying State, was also without foundation in the most latitudinous construction of that instrument. In support of the idea, resort was had to the most constrained analogies. It had been said that the concurrence of three-fourths of the States was necessary in amending the Constitution, and as an alteration or amendment, could, in effect, be made by interpretation, therefore the concurrence of three-fourths was required for interpreting that instrument. But it should be remembered that a bare majority was the inherent principle of a republican government, and applicable in all cases not specially provided for—that the majority of three-fourths was wholly arbitrary, and required by the Constitution only in cases of amendment—that there was no such provision in regard to its interpretation, and hence the power of interpretation under the Constitution other than in the last resort, must reside, according to the principles of our government, in the hands of a majority of the States, or their federal agents. Believing, as he did, that a majority of the States would interpret the

Constitution favorably to the Tariff, and that such decision, if not absolutely obligatory, would carry with it a strong moral force, he was opposed to going into a General Convention on the subject. Even if the concurrence of three-fourths were admitted to be necessary for interpretation, and the anti-tariff States numbered more than one-fourth, the Convention would result in nothing beneficial. The tariff States would assert that the Constitution already conferred the disputed power on Congress, and three-fourths of the States must concur in taking it away, while the anti-tariff States, denying the existence of the power, would call upon the three-fourths of the States to assert it. Upon the decision of this preliminary question the result would depend, and as neither would yield the point, it was easy to foresee that the Southern States, if not bound hand and foot by a bare majority, would quit the Convention under disappointment and increased excitement. There was at least as much reason to expect relief from the Government, as from the Convention, and without the danger attending the latter resort, of a final adverse construction by the highest tribunal provided by the Constitution. Such were a few of the errors and evils of this most extraordinary doctrine.

Nullification was said to be a remedy recognized and affirmed by the Resolutions and the Report of the General Assembly of Virginia in '98 and 99; but after the most careful and anxious examination of those documents, he had satisfied himself that nullification, as a constitutional remedy, was not contemplated by them, nor was it a legitimate inference from the principles imbodied in them. The doctrine was usually traced to the latter part of the third Resolution of '98, which read thus: "and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States, who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them." The right of the States to "interpose" in cases of dangerous infractions of the compact, was here asserted in the broadest terms. The difficulty, of the present day, consisted in ascertaining what mode of interposition was contemplated by the authors of the resolution. South Carolina contended that *nullification* was one kind of interposition known to the Constitution. Fortunately, he said, the Report of '99, in combatting the objections of other States to the Resolutions, had made an express enumeration of those means of interposition which came within the purview of the Constitution. It was there laid down, that the States had a right through their ordinary legislatures, to declare an act of Congress to be unconstitutional, and to communicate the declaration to the other States, inviting them to concur in a like declaration. That they "might have made a direct representation to Congress, with a view to obtaining a rescinding of the two offensive acts; or they might have represented to their respective Senators in Congress, their wish that two-thirds thereof would propose an explanatory amendment to the Constitu-

tion; or two-thirds of themselves, if such had been their option, might, by an application to Congress, have obtained a Convention for the same object." It was said, that these several means "were all constitutionally open for consideration." Nullification was not mentioned as one of the constitutional means. A State had the right, under the Constitution, to declare a law unconstitutional, but not to make it null and void. In the language of the Report of '99, "the declarations in such cases, are expressions of opinions, unaccompanied with any other effect than what they may produce on opinion, by exciting reflection." So careful were the authors of the resolutions of '98, in guarding against the impression, that it was intended to *make* the Alien and Sedition laws void, instead of merely *declaring* them so, that they struck from the 7th resolution, the words declaring those acts to be "not law, but utterly null, void, and of no force or effect." It was very evident, he thought, that the Assembly of '98, had no idea of resorting, at that time, for the then existing grievances, to any other than the pacific means already mentioned. The 7th resolution expressed a confidence, that the necessary and proper measures would be taken by each State, "for *co-operating* with this State in maintaining, unimpaired, the authorities, rights and liberties reserved to the States respectively, or to the people." Mr. John Taylor, who brought forward the resolutions, while defending the advocates of them, from the charge of meditating "an unconstitutional resort to arms," said, in the course of the debate, that "they had pursued a system which was only an appeal to public opinion, because that appeal was warranted by the Constitution and by principle; and, again, he remarked, "that the plan proposed by the resolutions would not eventuate in war, but might in a Convention. He did not admit or contemplate that a Convention would be called."

It was said, however, that if the struggle of '98 and '99 amounted to nothing more than an appeal to public opinion, through a legislative declaration, of the unconstitutionality of certain acts of Congress, that its importance had been greatly exaggerated, inasmuch as there never could have been a doubt of the right of the State legislatures to impugn in this mode the acts of the Federal Government. In reply to this, he would remark, that it was an undoubted historical truth, that, whatever might have been the abstract meaning of that Assembly, they had in fact resorted to no other remedy than a legislative declaration; and of the tremendous efficacy of a bold and timely appeal to public opinion in that form, the overthrow of Federalism and the triumphant introduction of the Republican Party into power, afforded a memorable proof. It was one of the consequences of that victory, that the right of the State legislatures to declare an act of Congress unconstitutional, was now no longer questioned. The time had been when the matter was viewed in a different light. The responses of most of the States to the resolutions of '98, were very general in their terms of condemnation; but it was plain that they meant to deny the right of the Legislature to pronounce upon the constitutionality of a law of Congress.

The Legislature of the little State of Rhode Island and Providence Plantations, which, from being the last State to come into the Union, seemed to have become the most fearful of being separated from it, declared in their response that they did not feel themselves authorized, "in their *public capacity*, to consider and decide on the constitutionality of the Sedition and Alien Laws," but "that in their *private opinions*, these laws were within the powers delegated to Congress." Indeed, the opposition of the Federal party in the Assembly of '98 was founded on this precise doctrine, and the resolution offered by that party as a substitute, contained this single ground of defence, "that as it is established by the Constitution of the United States, that the people thereof have a right to assemble peaceably and to petition the government for a redress of grievances, it therefore appears properly to belong to the people themselves to petition, &c. and it should be left to them," &c.

There was, said Mr. B. an official act of the Assembly of '98, which tended to show that the right of making a free declaration of opinions, either in a public or private capacity, against acts of Congress or otherwise, was contested, not by resolutions only, but, as was apprehended, in practice. A few days after the adoption of the celebrated resolutions, an act was passed, and which, he said, still stands unrepealed on our statute book, making it a misdemeanor in any person, to arrest or prosecute any member "for or on account of any words spoken or written, any proposition made, or proceedings had, in the said Senate or House of Delegates;" and authorizing the judges, upon application, to liberate by *habeas corpus*, any member arrested or imprisoned on such account. He had often heard it said, that this was an act of nullification by Virginia, but he did not so consider it. There was no direct reference to the Sedition Law, and whilst he thought it quite probable it was aimed at that law in part, yet it might have been equally necessary to protect members from prosecution, under the principles of the common or statute law, in the State courts, and that he presumed was the reason why it was still found in our Revised Code. Even if it were intended exclusively to counteract the Sedition Law—yet a copy of the record was not denied, and had its validity been examined by the Federal Court under the 25th section of the Judiciary act, there was no reason to doubt, that Virginia so far as her ordinary Legislature was concerned, would have acquiesced. He understood that the interposition of the State in her sovereign capacity, was, according to the South Carolina theory, an essential element of Nullification. How then could the Legislature, in which the sovereign power certainly did not reside, nullify a law of Congress. It had been often mentioned as a conservative principle of our government, that the State Legislatures would "sound the alarm to the people" whenever there was an infraction of the compact. But why should they sound the alarm to the people, if the right of redress were in themselves? Each State, he said, had a government composed of two distinct branches—the Federal and the local branch —and there was a set of agents employed in the management of

each. Each set of agents, within its allotted sphere, and as to the subjects expressly submitted to it, was liable to no control from the other. Each agency had a judicial department, whose province it was to confine the action of that agency within its constitutional limits. There was danger, also, that one agency might encroach on the jurisdiction of the other, and hence, for its protection in the exercise of its rightful powers, a supremacy was given to the Federal agency or government, by that clause of the Constitution which says that "The Constitution of the United States and the laws which shall be made in pursuance thereof, &c. shall be the supreme law of the land; and the judges in every State shall be bound thereby," &c. The fear, at that time, doubtless was, not that the authority of the State Governments would not be maintained, but that the rightful authority of the Federal Government would not be acknowledged; and hence the requisition that the agent conducting the former should swear to support the Federal Constitution. He would take that occasion, he said, to add that, as sovereignty did not reside in either of those Governments, that oath was not an oath of allegiance from a citizen to a sovereign power, but merely an oath by one set of agents to support the constitutional authority of another set of agents. The manner in which the Federal Judiciary should act upon a State law repugnant to the Constitution of the United States, was pointed out in the 25th section of the Judiciary Act. Virginia had asserted the validity of the provisions of that section, in her resolutions of 1809, growing out of the Pennsylvania case of Olmstead, and as long as she acknowledged its force, no act of Assembly she could pass, would amount to Nullification, because, in the process of enforcing it, the Federal Judiciary might arrest and overrule it. This act of '98, like many acts passed by the States, might have conflicted with an act of Congress; but if it had been so adjudged and declared unconstitutional, it would itself have been thereby annulled.

But, Mr. B. said, whilst he contended that the Assembly of '98, had not, in fact, resorted to any other than constitutional means of redress, of which Nullification was not enumerated as one, he did not wish to be understood that there were, according to those resolutions, no other modes of interposition open to the States. The third resolution, which he had before quoted, asserted the right of the States to interpose. The Report of '99, specified the *constitutional* means of interposition; but there were also means of interposition, beyond the provisions of the Constitution, and although not pointed out expressly in that report, or the resolutions themselves, they were necessary deductions from the principles there laid down. This extra-consitutional interposition of the States, could be made only by the sovereign power—the majority of the people—and only in "those great and extraordinary cases, in which all the forms of the Constitution may prove ineffectual against infractions dangerous to the essential rights of the parties to it." As long as a State remained subject to the Federal Constitution, she must abide by its operation on her citizens through the medium of the constituted

authorities. When she appealed from that Constitution to her sovereign rights, it was an interposition in her sovereign capacity, and must be made according to the rules of the law of nations. As he had before remarked, in such case, there were two alternatives, and the State might either regard the compact as at an end, or, in other words, secede, or else she might compel the other contracting parties to perform their engagements. In general, the weaker party believing itself aggrieved, would choose the former alternative, and the stronger party the latter. He had already gone fully into a consideration of the circumstances under which the former course might be pursued; and it was sufficient to add, that precisely the same circumstances, and no other, would justify the latter measure. Whenever, according to the rules he had laid down, the right to compel the other party to perform its promises had accrued to a State, he would not deny the right of such State to judge of the means of compulsion, or in other words, "of the mode and measure of redress." He would even concede that Nullification might be a part of the plan of coercion. But then it ought to be distinctly understood that Nullification, in such case, was a war measure, differing in form but not in principle from real hostility. He had before remarked that when a State acted in its sovereign capacity, without the pale of the Constitution, it could only be attacked or coerced by the co-states, according to the usages of war. The obligation was reciprocal on the aggrieved State to seek redress, if she sought it at all, on the same principle. Nullification was an appeal from the Constitution, and pre-supposed a withdrawal from the Union, in order to justify such an attack on the other States, as was incompatible with the Constitution. As long as a State acknowledged the obligations of that Constitution, her citizens were directly liable, in their persons, to its operations, and before she could screen them from it, she must in her sovereign character have assumed the responsibility of resisting the Constitution, or in other words, throwing it off—and not a part only but the whole—for, as was said in the Report of '99 in reference to compact, "a breach of a part may be deemed a breach of the whole; every part being deemed a condition of every other part." When a State had resorted to Nullification, or any other measures, *to compel* the co-states to execute the compact according to her construction of it, she must either be treated as out of the Union, and by making this recurrence to her natural right, be considered as having freed herself from subjection to the Constitution, for the purpose of coercing the other States, or else her citizens must be liable to the penalties of treason, and the irregular, unconstitutional action of the organ of her sovereignty be disregarded.

It resulted, he said, from the character of the Federal compact and of the parties to it, that when a State interposed in this extra-constitutional manner, and by the preliminary steps he had referred to, spread the panoply of her sovereignty over her citizens, she could then be reached only in her collective capacity. Under the confederation, the Congress had power to compel the States

to perform their engagements, as was maintained by Mr. Jefferson, and not denied, he believed, by any one. The evil was, that the laws of the Federal Government could only be executed through the intervention of the State Legislatures, and if a requisition for revenue, for instance, were made, and the State failed to act in raising it, there was no mode of compelling her but by the application of force against her in her collective character. This was remedied by allowing the General Government to act directly on the persons and property of the citizens of the States, without the necessity of intermediate legislation. Under the confederation, a mere non-compliance or failure to act on the part of the State, defeated the measures of Congress. Under the Federal Constitution, the operation of the law could be obstructed only by the direct and positive interposition and resistance of the State. This could not be done without the concurrence of a majority of the people, avowedly appealing from the Constitution, and when done, the State would be precisely in the same situation as if under the confederation, it had refused in its sovereign capacity to obey the requisitions of Congress. The power of military coercion, admitted to exist in the one case, would be the same in the other. Each State had laid open its bosom to the action of the Federal Government, and in closing it for the purpose of coercing the co-states, by nullification or otherwise, it was resorting to a measure beyond the Constitution, and which, while it was attended with all the hazards of secession or even greater, could not be justified by a less palpable degree of injury and oppression. Nullification, in the only sense in which he understood it, was in fact far more dangerous than secession, and led more certainly to hostile collision. By seceding simply, a State renounced the compact altogether—by nullifying, she sought to compel the confederate States to revive it, and observe it according to her views. The co-states might permit secession, and be content to preserve the rest of the Union; but nullification could be met only by force or submission. It was war disguised in the garb of peace, and if persisted in must inevitably lead to fatal consequences. He had already expressed the opinion that the curious and ingenious devices with which it was armed in South Carolina, might prevent collision for a time, but when its authors had succeeded in showing it to be an effectual means of enabling them to enjoy all the benefits of a government, and yet disregard its laws, they had furnished the most conclusive proof that it must end in war or anarchy.

Nullification, he said, was neither a constitutional remedy, nor a peaceable remedy; and he thought it of much importance that its true character should be exposed. Many might be willing to seek redress through any amicable means, who would nevertheless revolt at the idea of disunion or bloodshed, if it were presented to them without disguise. It was a snare for the feet of the unwary. It was a false light, to lure the people on with the promise of a peaceful consummation, until they had reached a point at which the appalling horrors that opened before them, were less to be dreaded than the humiliation of retreat. And yet Virginia was said to be

promulgated this as a *constitutional* remedy. Kentucky too, in her resolutions, attributed to the pen of our lamented Jefferson, was said to have subscribed to the same doctrine. But the language was too plain to admit of doubt. In one of the resolutions, the expression was used, "the co-states recurring to their *natural right* in cases not made federal, will," &c. Again; it was said, "that where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy; that every State has a *natural right*, in cases not within the compact, to nullify, of their own authority, all assumption of power by others within their limits." Who could doubt that nullification was here regarded as a natural right, and that a recurrence to it was an appeal *from* the Constitution rather than *to* it. And in what mode, he would ask, could sovereign States coerce one another, other than by war, or measures of reprisal or retaliation, partaking of the character of war. Some gentlemen exclaim against the right of the co-states, under any circumstances, to coerce a single State; but would they, at the same time, contend for the right of a State to coerce the other States, by nullification or otherwise? If a State should nullify the authority of the Federal Government, in any one part, then, "every part being deemed a condition of every other part" of the compact, in the language of the Report of '99, he supposed that Government might nullify so much of the Constitution as authorized such State to send Representatives to Congress; and this would, in effect, drive her from the Union. When the controversy was carried beyond the pale of the Constitution, it could be settled only by arms or negotiation—by the twenty-three States coercing the one, or the one coercing the twenty-three—by the secession of the one State from the co-states, or the secession of the co-states from the one State. The arbitrament of a General Convention was a provision of the Constitution. It should precede, not follow, Nullification, and was not designed to decide appeals from the Constitution.

Mr. B. said, he knew it was the opinion of some, that, although the doctrines of South Carolina were erroneous, yet as she was engaged in fighting the battle of the whole South, the means by which she sought to accomplish the object ought not to be too closely scanned or too severely condemned. But he trusted Virginia would never be influenced by such a consideration. He wished her on this, as on every occasion, to act in a manner worthy of the reputation she had long enjoyed for justice and disinterestedness. He wished her to maintain her rights to the fullest extent, and at every hazard, but to maintain them, by proper and constitutional means—or if, unhappily, she should ever be driven to measures beyond the limits of the Constitution, to disclose to her sister States her true position, and fearlessly abide the issue. He said the influence which Virginia enjoyed in this confederacy was owing as much, or more, to moral causes, than to her physical power. She was amongst the first in asserting our independence, and had borne a glorious part in its defence. She had given away principalities to enrich the Union, and reserved for herself mountains and sands.

Poor as she might be, and feeble in comparison with some of the younger and more vigorous States, she was still respected for her generous sacrifices and the magnanimity with which she had adhered, through good and through evil, to the principles of justice. Let her stoop from this exalted attitude, to catch the transient benefits of expediency, and her honored brow would be stripped at once, of half its dignity. She had first promulgated those principles, which all professed to hold in so much reverence, and surely, it was her right and duty to declare the true intent and meaning of them. If, instead of disowning this spurious doctrine of nullification, she allowed it, without contradiction, to be ascribed to her, and participated in the advantages, if such they might be, of its present exercise, with what grace could she hereafter disclaim it, when turned, perhaps against her own bosom. If nullification were connived at now, it would soon grow into favour, and instead of " the extreme medicine of the State, become our daily bread." It were easy, even at this time, to foresee cases in which nullification, if acknowledged as a constitutional remedy, might be successfully practised. More than one-fourth of the States, had similar interests in regard to the public lands, and, if one could negative a law of Congress, applicable to that subject, and be sustained by the others, until overruled by three-fourths of the States, there would be an end of the power of Congress over that important public interest. The same result might follow from the identity of situation of many States, in regard to the Indian tribes ; and if these, and other combinations, which might readily be imagined, were carried out, at the same time, into acts of nullification, the operation of the government, on all important subjects, might be wholly suspended. The present trial to which our institutions were exposed might, and he trusted, would soon be past, but in the midst of its alarms, we should faithfully endeavor to maintain those great principles, without which, the Union itself would not be worth preserving.

Mr. B. said, the result of his reflections on this subject, was, that the question must eventually be settled by Congress, and the sooner it went before that tribunal the better. He had endeavored to explain, upon the principles of national law, the equal right of the parties to the compact to judge for themselves respecting infractions of that instrument ; and whenever a State had assumed the attitude now occupied by South Carolina, it devolved on the co-states to decide whether she was right or whether she was wrong ; whether she was in the Union or out of it, and what mode of redress, if any, was called for by the occasion. Whatever might properly be done by the co-states, could equally be done by their common agent, the Congress of the United States. If the State had resolved on secession, it was for Congress to determine, whether, according to the rules he had before laid down, she had, or had not, acquired the right. If the State had interposed in her sovereign character and *nullified*, it was in like manner to be decided, whether the co-states would submit to her demands, or would adopt countervailing mea-

sures of coercion. So well was this power of Congress to act against a State in her collective capacity, understood at the adoption of the Constitution, that North Carolina proposed as an amendment, "that Congress shall not declare any State to be in rebellion, without the consent of at least two-thirds of all the members present in both Houses." These were his views in regard to the abstract principles involved; but the application of them must depend on the peculiar circumstances of the case. Whilst he asserted the right of Congress to levy war on a State, when her attitude and her offences justified it, or to employ such means of retaliation and reprisal or counter-legislation as long as she continued in the Union, as might be necessary, he was far, very far from being an advocate of force, in any shape, on grounds of expediency. It would be, he said, more than idle to indulge in speculations as to causes which might justify this painful resort, but he felt it his duty to express his own conviction, that under existing circumstances it ought not to be thought of in reference to South Carolina. He had already said that this State had not discharged her duty to her sister States, in seeking redress, through all the forms of the Constitution, and had put at hazard the peace and happiness of the country, at the very moment when the prospect was fairest of relief from the evil of which she complained. It was true, moreover, that a State in maintaining her acknowledged rights, was bound to do so, with as little injury to others as possible, and might even impair her right by the employment of improper or untimely means of establishing it. But admitting all that, he could not forget that South Carolina had a just and substantial cause of complaint; and he, for one, could never lift his arm against her, unless an obstinate perseverance in measures destructive of the peace and repose of the country, should render it necessary for self-preservation. He had but little hope of the efficacy of an appeal to that State, and had ceased to calculate on her moderation and forbearance. He looked to Congress with anxious expectation, and would favor any steps for bringing the matter, as soon as possible, before that body. The question would be, whether force should be employed to uphold the Government, or whether the Tariff, the cause of all our woes, should be abandoned for the sake of peace and Union? He could not persuade himself to doubt, that every patriot in the councils of the nation, would cheerfully embrace the latter alternative, and fearful as the appeal might seem, he could wish it were brought at once to a decision. Should Congress blindly deny us peace, and Carolina madly persist in her measures, he would wish to see the Federal Government acting on the defensive, and maintaining its authority with firmness and moderation, until, under the better auspices of another Congress, this fruitful subject of discord might be put at rest forever.

Mr. B. said, in conformity with the views which he had expressed, he had prepared some resolutions, which he should offer for the consideration of the House, at a proper time, and for the present, would content himself with reading them. He objected, he said,

to the Resolutions of the Committee, because they re-affirm without note or comment, that resolution of '98 which was claimed as the basis of Nullification; and thereby gave an implied sanction to the known and reiterated construction that had been put upon it by South Carolina. In addition to this, whilst the resolutions solemnly protested against Nullification, it was not declared to be unconstitutional, and the fair inference, in connection with the re-assertion of the right to interpose, was, that Nullification, as a constitutional remedy, was objected to, not as being wrong in principle, but as being prematurely and injudiciously resorted to. He thought, moreover, that the whole tenor and spirit of the resolutions was incompatible with that firm and impartial attitude which it became Virginia to assume, in vindicating the Constitution from the various dangers with which it was menaced. Such of the friends of State Rights as were equally averse to either extreme of consolidation or nullification, had a difficult and delicate part to act, and not composing a majority of themselves, they were, of necessity, sometimes in the ranks of one party and sometimes in the other. There was one maxim, however, to which his course should ever conform, and that was not to condemn a doctrine with his lips, while the whole moral influence of his measures was calculated to countenance and encourage it. Nullification was *revolution*, if the term could be applied to the acts of sovereigns, and he wished the whole American people to understand its character and tendency. He knew, he said, the responsibility he incurred, in coming forward with resolutions on this important subject—how liable he should be to misconception—how incapable he was of avoiding error—and how fair a mark he should render himself for the shafts of opposition. Had he obeyed the dictates of a selfish policy, he should have crouched low on the earth 'till the storm had passed, or shunned its fury by flying before it. But on such an occasion, he was ready to hazard something—to hazard all—in the service of the country, and would deem it the happiest incident of his life, if, at any sacrifice, he should contribute even the humblest assistance in attaining the object at which all were aiming.

He said, he trusted, the opinions which he had advanced would not be ascribed to a want of proper respect for South Carolina. He had much cause, indeed, to be attached to that State. His father had freely shed his blood in the war of the revolution, in defending its borders from an invading enemy. It was the abode of many of his valued acquaintances, and the dearest friend he had on earth, was acting a conspicuous part in this fearful drama of nullification. There were circumstances too, which it suited not the occasion to mention, that gave to this contest, as it concerned himself, a peculiar and touching interest. It had preyed on his thoughts—it had lain heavy on his heart, and when the stoutest advocate of Carolina, had boasted most of his affection for her, to him he might say that "Brutus' love for Cæsar was no less than his." But this was not the time or subject for the indulgence of personal sympathies and predilections. Taking counsel of the

farewell words of Washington, he acknowledged but one rule of conduct in regard to the intercourse between States or nations, and that was an inflexible adherence, under every exigency, to the stern and rigorous principles of justice. Let no man charge him with indifference to the fate of Carolina—wronged she would not be—dishonored, he knew, she could not be—but even-handed justice demanded of us, an equal regard for the safety and welfare of the other States. He had a heart, he trusted, as warm with love of country, and anxious for its honor and happiness, as beat in the bosom of any living man; yet it was a love, not of Carolina alone, but of the Union—the Union, one and indivisible—the Union covering in its equal embrace, each and all of those gallant States, who, side by side, with the "Old Dominion," stood fast and firm in the cause of liberty, through the darkest hours of the Revolution. Would to Heaven that Carolina might yet pause in her perilous career, and in a becoming spirit of conciliation, patiently await that sure relief which must result from the self-correcting energies of the government. But should she, in disregard of the warning voice and earnest appeals of her sister States, madly press on to the fatal goal of disunion—should she in an evil hour, rashly resolve to relinquish her high inheritance, and like the lost Pleiad, marry herself to a mortal destiny, the remnant of this glorious Union, he trusted, might still be preserved in undiminished splendour, and Virginia still shine on, a bright and majestic star in the loveliest constellation which the human eye had ever gazed upon.